

Subject: RE: city of victoria data practices advisory opinion request inquiry



Vose, Robert J. <rvose@kennedy-graven.com>

to Moxley-Goldsmith, Taya (ADM), Short, Jean M., Doug Reeder, Ann Mahnke ▾

Fri, Dec 28, 2018, 2:51 PM



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Ms. Moxley-Goldsmith:

I wanted to respond promptly in light of the upcoming holiday.

It is not possible to unequivocally state whether the Mayor and council members are treated as employees in all contexts. In general, however, the Mayor and council members are not treated as employees, and any exceptions do not appear to be relevant to the City's request for an advisory opinion. Notably, the City's personnel policies do not apply to the Mayor or city council members except for certain provisions requiring maintenance of a "respectful workplace."

In addition, the Mayor and council members do not have regular work hours. Rather, the Mayor and council members are expected to attend council meetings and other official City meetings, and to take whatever time is needed in advance of such meetings to be familiar with the agenda and supporting materials. They may also periodically participate in other events on behalf of the City. Further, the Mayor and council members do not have offices in city hall. The City does, of course, make the council chambers and associated equipment available for the Mayor and council members' use during council meetings. The City may also make meeting rooms at city hall available to them for meetings on behalf of the City.

The Mayor and council members receive annual compensation. The amount is periodically set by ordinance adopted by the city council. See, City Code, Sec. 2-28. https://library.municode.com/mn/victoria/codes/code_of_ordinances?nodeId=PTIGEOR_CH2AD_ARTIIMACO The Mayor and council members are also covered by the City's insurance in certain circumstances. And the City makes iPads available to council members but does not provide other equipment or devices such as cell phones or computers for their use. The City has a policy governing iPads issued to council members. However, the Mayor indicates that he does not have a City-issued iPad. In any event, the City does not understand its iPad policy to govern the Mayor's Facebook page and neither the Mayor nor the requesting party, Ms. Coon, have suggested otherwise.

In sum, as our Dec. 4 opinion request indicated, the City is unaware of any City policy directly governing the Mayor's Facebook page. While no City policy governs the Mayor, the City's personnel policies do address employee conduct in this regard. Among other provisions, the policies state:

3.5 PUBLIC COMMUNICATIONS

News Releases

Formal news releases concerning municipal affairs are the responsibility of the City Manager. All media interviews must be approved by the City Manager before the interview. All contacts with the media should be reported to the City Manager as soon as practical. All news releases concerning City personnel will be the responsibility of the City Manager

No City employee is authorized to speak on behalf of the City without prior authorization from the City Manager or designee.

Phone and Email Response

Employees are expected to ordinarily return phone calls and emails within 24 hours when received during regular working hours. When away from the office, automatic notices for phone and email should be activated notifying customers of an alternative contact.

3.6.9 Social Media

Employees are prohibited from using social media (*such as Facebook, LinkedIn, blogging, etc.*) for personal purposes during work hours or using City computers for these purposes.

There are benefits to utilizing social media to communicate our services. Employees must recognize that their writing on social media sites reflects on the City. Unless given permission by the City Manager, employees are not authorized to speak on behalf of the City, or to represent that the employee has such right.

Any written references to the City must be prefaced with a statement that your expressed views are your own and not those of the City, or of any person or organization affiliated or doing business with the City.

Employees are expected to protect the privacy of the City, its employees and residents, and are prohibited from disclosing personal employee information and any other proprietary and nonpublic information to which employees have access. Non-public and confidential information such as information related to coworkers, personnel data, medical information, claims or lawsuits against the city should never be shared.

Do not post content that violates existing City policies that prohibits hate, bias, discrimination, and pornography, libelous or otherwise

Do not post content that violates existing City policies, that exhibits hate, bias, discrimination, and pornography, libelous or otherwise defamatory content. Only post content that is suitable for readers and viewers of all ages.

Do not post content that a reasonable citizen may not consider to maintain the dignity and decorum appropriate for government.

Do not post information that affiliates the City with or advocates for a political party or candidate running for council.

Do not post any photo or video without permission of each person in the photo or video. Do not post the name of any individual without permission from that person.

Employees who write inappropriate, disrespectful or unauthorized comments about the City, its employees, residents or anyone else with whom the City does business may be disciplined up to and including termination of employment.

The Mayor's posts on his Facebook page, as well as posts made by others' on his Facebook page, do not comply with the foregoing policies in several respects. For example, no posts on the Mayor's Facebook page received prior authorization from the City Manager, and none are prefaced with a statement that the views expressed are those of the person posting alone and not those of the City. But again, the City does not understand these personnel policy provisions to be applicable to the Mayor's Facebook page. Whether the City or another governmental authority could impose and effectively enforce such (speech) restrictions on an elected officials' personal use of social media such as Facebook is uncertain and seemingly doubtful.

Please let me know if the Commissioner has further questions.
Thank you

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From: Moxley-Goldsmith, Taya (ADM) [mailto:taya.moxley-goldsmith@state.mn.us]
Sent: Friday, December 28, 2018 10:50 AM
To: Vose, Robert J.
Cc: Short, Jean M.
Subject: city of victoria data practices advisory opinion request inquiry

Mr. Vose,

The Commissioner has asked me to reach out to the City of Victoria to clarify a factual issue related to the data practices advisory opinion you requested on December 4, 2018.

Can the City provide some information about whether the Mayor is considered an employee of the City? If so, does he have regular work hours and does the City allow employees to do incidental personal tasks on work time/equipment (i.e., use computers/internet for personal Facebook use)?

This information will be helpful in drafting a more comprehensive advisory opinion.

I appreciate your time and attention to this matter. Please let me know if you have any questions.

Regards,

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